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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re West Agro, Inc.

Serial No. 76405802

Thomas H. Van Hoozer and Cheryl L. Burbach of Hovey
Williams, LLP for West Agro, Inc.

Angela Micheli, Trademark Examining Attorney, Law Office
101 (Ronald R. Sussman, Managing Attorney)

Before Seeherman, Zervas and Kuhlke, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

West Agro, Inc. has applied to register, on the
Supplemental Register, MILK QUALITY TEAM as a mark for the
following services:

Repair and maintenance services in the
field of dairy equipment (Class 37);

Delivery of dairy farm hygiene
products, namely, dairy farm equipment
hygiene products and animal hygiene
products, animal health products, dairy
farm supplies, and repair and

replacement parts for dairy farm equipment (Class 39);

Training services for dairy producers, namely, conducting workshops, seminars and classes, individualized training in the field of dairy farm hygiene, namely, dairy farm equipment hygiene and animal hygiene, animal health, milking system analysis, and milking management (Class 41); and

Consulting services for dairy producers in the field of dairy farm hygiene, namely, dairy farm equipment hygiene and animal hygiene, animal health, water quality testing and analysis, washing system function, milking and cooling system performance, and total farm hygiene; distribution of dairy farm hygiene products, namely, dairy farm equipment hygiene products and animal hygiene products, animal health products, dairy farm supplies, milking and cooling equipment; repair and replacement parts for dairy farm equipment; and providing chemical analysis for the optimization of hygiene on dairy farms (Class 42).¹

The Examining Attorney issued a final refusal of registration on the basis that the term QUALITY TEAM must be disclaimed because it is generic. The sole issue in this appeal is the propriety of the Examining Attorney's requirement for this disclaimer.²

¹ Application Serial No. 76405802, filed May 8, 2002, and asserting first use and first use in commerce in January 2001 with respect to the services in all four classes.

² Applicant had originally applied to register its mark on the Principal Register. The Examining Attorney refused such registration pursuant to Section 2(e)(1) of the Trademark Act and, when this refusal was made final, applicant amended its

The appeal has been fully briefed.³ Applicant did not request an oral hearing.

Section 6(a) of the Trademark Act, 15 U.S.C. §1056(a), provides that the Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. Section 23 of the Act, 15 U.S.C. §1091, provides, in pertinent part, that marks that are capable of distinguishing an applicant's goods or services and are not registrable on the Principal Register are registrable on the Supplemental Register. Thus, the issue before us is whether the term QUALITY TEAM is capable of distinguishing applicant's services from those of others.

It is essentially the Examining Attorney's view that the term "quality team" is in widespread use "as the generic name for a feature of applicant's services." Brief, p. 3. The Examining Attorney asserts that excerpts of articles taken from the NEXIS database and Internet web pages which are of record "show common usage of the word 'quality term' as the name of a category of services, quality team services." Brief, p. 3. Following are

application to the Supplemental Register. Thus, the question of the descriptiveness of the mark is not before us.

³ With its brief applicant has submitted as exhibits all of the correspondence--Office actions and responses--that is contained in the application file. Applicant is advised that it is unnecessary to submit these duplicative papers.

several of those excerpts which the Examining Attorney has highlighted in her brief:⁴

Merrill Lynch & Co. is bullish on Japan--at least on that country's concept of quality teams used to improve product quality and worker productivity.

The country's largest brokerage firm recently celebrated its first "quality teams day" at its One Liberty Plaza headquarters in Manhattan. The celebration was aimed at recognizing the contribution of the more than 2,500 operations personnel who have been active members of quality teams at Merrill for the past two years, said Mr. Michael Reddy, vice president-director of operations.

A typical Merrill quality team consists of eight to 15 employees carrying out similar jobs with a Merrill supervisor as the team leader. One group in the cashiers department, for example, saved Merrill \$40,000 per year. They realized that by updating daily certain securities eligibility data...
"The American Banker," June 23, 1983

Headline: Facilitator Critical to Quality Teams

A quality team group facilitator is important because this person keeps the team focused on its objectives and prevents it from getting off track. The guidelines that I use when training

⁴ These excerpts all appear to have been made of record with the Office action mailed March 13, 2004. At this point in the prosecution in the application, applicant had already amended its application to the Supplemental Register, and therefore the Examining Attorney was apprised that she was required to submit evidence that QUALITY TEAM was incapable of distinguishing applicant's services, and not that the term was merely descriptive of them.

people to be effective facilitators include the following....

"Sun-Sentinel" (Fort Lauderdale),
December 12, 1994

These cost savings are the result of efforts made by more than 30 cross-functional quality teams to address specific problems, improve work processes or manage major projects, such as Tariff 12 negotiations.

[Article about telecommunications at Xerox]

"Network World," April 16, 1990

Headline: The quality cry of a modern Paul Revere

But there was extended debate over whether to start with value analysis or quality teams. Value analysis asked: "Are we doing the right things?", while quality teams asked: "Are we doing things right?" We decided both were vital and immediate.

"Journal of Services Marketing," 1995

Headline: Chrysler Quality Gurus Focus on Upstream Changes

Despite some criticisms that its vehicles suffer from quality problems, Chrysler Corp. seems satisfied with the work of its quality team headed by James Holden and Rex Franson.

...

What does the quality team do?

Holden: The quality organization is represented within the platform organization not just as an external, but also as an internal force. Our job is to make sure that the quality team is consistent.

"Automotive News," January 29, 1996

Headline: Teaming up for quality;

Technician's Notebook; Column

Total Quality Management (TQM) is a management philosophy based on meeting

and exceeding customer's desires by continuous improvement of processes. This is accomplished through elimination of underlying causes of defects using input from all persons engaged in the operation. Those closest to the process are empowered by management to effect improvements in the process. In TQM, decision-making is moved into the hands of quality teams made up of experienced individuals with a diversity of backgrounds, thereby enabling innovative ideas to be created.

...

Employee quality teams are the essence of TQM. Corporate, divisional and factory steering committees are used to support and provide direction to team activities, especially to train, assist and encourage teams, to remove barriers to team functioning, and to provide recognition for team successes.

"Ceramic Industry," February 1994

There are similar excerpts from the various websites. For example, a module description from TTS Performance Systems, Inc. for a module called "Quality Teams" lists as the title of Lesson 1, "Use of Quality Teams," and as Lesson 2, "Quality Team Techniques," and explains that "In this module, you will learn how quality teams are used..."
www.myplantstraining.com

We are not persuaded by the Examining Attorney's arguments. First, it is not clear from the evidence of record that QUALITY TEAM is a generic term for the services identified in applicant's application. As applicant points

out, a determination of whether a term is generic involves a two-step inquiry: First, what is the genus of goods or services at issue. Second, is the term understood by the relevant public primarily to refer to that genus of goods or services. *H. Marvin Ginn Corp. v. Int'l Assn. of Fire Chiefs*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). The services at issue are repair and maintenance services in the field of dairy equipment; delivery of dairy farm hygiene products; training services for dairy producers; consulting services for dairy producers in the field of dairy farm hygiene; distribution of dairy farm hygiene products; and providing chemical analysis for optimization of hygiene on dairy farms. While the evidence of record shows that "quality teams" are used in many businesses and industries as part of a business model, the evidence falls far short in establishing that QUALITY TEAM refers to any genus of services in applicant's identification.⁵

It is also not clear to us that consumers would view QUALITY TEAM, as that term is used within applicant's mark, MILK QUALITY TEAM, as referring to a quality team as that

⁵ The Examining Attorney has also asserted that a potential customer "when seeing the applicant's proposed mark on the applicant's services, would immediately know that the services are performed by quality teams." Brief, p. 6. Although this assertion would be proper if the question before us were whether QUALITY TEAM is a merely descriptive term, that is not the issue here.

term has been used in the various articles that are of record. Instead, consumers are likely to view the word QUALITY as referring to MILK, and to understand the mark as indicating a team that helps to improve or maintain the quality of milk, rather than as the business concept of a "quality team." In this connection, the promotional piece submitted by applicant with its response filed March 13, 2003, refers to "A Team Approach" and claims to help "dairy producers of all sizes achieve their milk quality..." This same piece includes a Mission Statement that:

The Chemland Milk Quality Team will deliver reliable service, technical expertise and cost-effective products related to the production of **high quality milk**. We passionately assist our customers and the dairy industry as an enthusiastic and willing partner, sharing the same **milk quality** and udder health goals of the dairies we serve.
(emphasis added)

The same statement appears on another of applicant's promotional pieces, under the heading "Our Goal."

Because applicant's mark may be viewed as consisting of the phrase MILK QUALITY, followed by the word TEAM, rather than as the word MILK, followed by the phrase QUALITY TEAM, and because, in any event, the evidence of record fails to demonstrate that QUALITY TEAM is a generic term for applicant's identified services, we find that the

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mark MILK QUALITY TEAM is registrable on the Supplemental Register without a disclaimer of QUALITY TEAM.

Decision: The refusal of registration is reversed.